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EXTRAORDINARY

PART II—Section 3

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 8th March 1954

S.R.O. 895.—Whereas the election of Shri Khandubhai Kasanji Desai, as a member of the House of the People, from the Halar constituency of that House, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Sharma Shri Krishna Sharma Gurdayal Sharma of Savitri Sadan, Manahar Plot, Rajkot;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION CASE NO. 336 OF 1952

Sharma Shri Krishna Sharma Gurudayal Sharma, age 52, residing at Savitri Sadan, Manhar Plot, Rajkot.—*Petitioner.*

Vs.

- (1) Desai Khandubhai Kasanji Dev Sheri, Mandvi Pole, Ahmedabad,
- (2) The Returning Officer, Halar Constituency for the House of People, Manvillas Palace, Jamnagar.—*Respondents.*

Mr. A. V. Mody, Advocate for the petitioner.

Messrs. C. N. Shah and K. L. Hathi for the respondent No. 1.

Mr. A. R. Bakshi, Advocate General for the respondent No. 2.

JUDGMENT

Consequent upon the resignation of Maharaj Shri Himatsinhji Jadeja, a member of the House of People from the Halar Constituency in Saurashtra, a bye-election for the purpose of electing a new member from the Constituency was held on 17th August 1952. Three persons viz. the petitioner, respondent No. 1 and one Purushotam Dudhat filed their nominations but the nomination of Purushotam Dudhat was rejected by the Returning Officer and consequently the contest survived between the petitioner and the respondent No. 1 only. The petitioner had stood on the Hindu Mahasabha ticket while the respondent No. 1 stood on the Congress ticket. The result of the bye-election was declared on 21st August 1952, and out of the total poll of 61,268 votes, the petitioner secured 7,682 votes, while the respondent No. 1 secured 53,573 votes. Consequently the respondent No. 1 was declared elected. The petitioner has preferred this election petition challenging the validity of the respondent No. 1's election.

2. The grounds on which the respondent No. 1's election is challenged are as under:—

1. That the returned candidate was successful only because of the undue influence prevailing extensively at the election.
2. That the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by the Congress to vote for Shri Khandubhai the respondent No. 1 and not to vote for the petitioner especially because he contested the election on the Hindu Sabha ticket.
3. That the election of the returned candidate Shri Khandubhai has been procured or induced or the result of the election has been materially affected by the corrupt or illegal practice.
4. That corrupt practices specified in Section 123 have been committed by the returned candidate and by various persons with the connivance of the returned candidate.
5. That the result of the election has been materially affected by the non-compliance of the provisions of the Representation of People Act and the rules framed thereunder.
6. That but for the votes obtained by the respondent No. 1 by corrupt or illegal practice the petitioner would have obtained a majority of valid votes.

3. The petitioner has prayed for the following reliefs viz.:—

- (1) for declaration that the election of the respondent No. 1 be declared void; and
 - (2) that the petitioner be declared to have been duly elected,
- but at the time of the arguments the relief (2) was dropped by the petitioner's learned Advocate.

4. Particulars of the corrupt and illegal practices have been set out in the petition and in the lists of particulars. The respondent No. 1 has generally denied allegations of corrupt and illegal practices or put the petitioner to the proof of them and they are made the subject of distinct issues. The petitioner's learned Advocate however dropped all the issues at the time of the arguments except issues Nos. 3 and 10 and it is unnecessary to set out the allegations except those which are covered by these two issues. The respondent No. 2 has filed his written statement and allegations of illegal practices alleged against the Presiding Officers have been denied by him. These allegations were also made the subject of distinct issues but they were all dropped by Mr. Mody with the result that no allegation against any Presiding Officer survives and the petition does not survive against the respondent No. 2. This position was conceded at the bar by Mr. Mody.

5. Before proceeding to discuss the issues argued before us, it will be convenient to set out all the issues as they will give a general idea of the nature of the allegations against the respondents:—

1. Whether the petition is not legally tenable on account of non-joinder of Purushottam Dudhat.
2. Whether the Petition is barred by time.
3. Whether undue influence or coercion or intimidation prevailed extensively at the election and whether as a result, the opponent No. 1's election was not a free election.
4. Whether Jadavji Nathalal Kamdar, Lavji Govind and Ramji Daya entered the Polling Station at Mota Vadala and forced the Polling Officer to issue ballot papers to Kana Amba and Bhana Lava as alleged in para. 15 of the Election Petition.
5. Whether at the Haripur Polling Station the ballot paper of Dahi Nanji was issued to Dahyabhai Nanji as alleged in para. 16 of the petition.
6. Whether a ballot paper No. 086701 was issued by the Polling Officer at Haripur Polling Station and whether it was subsequently taken back and cancelled.
7. Whether the election propaganda in Fulchhab, dated 12th July 1952, 15th July 1952 and 31st July 1952 were defamatory of the personal character or conduct of the petitioner and whether the said propaganda was carried on with the connivance of the opponent No. 1 or his agent and whether it is reasonably calculated to prejudice the prospects of the petitioner at the election.

8. Whether Bhanushankar Shukla was a Government servant at the material time and whether the said Bhanushanker carried on propaganda in favour of the opponent No. 1 and against the petitioner as alleged in para. 20 of the petition.
9. Whether allegations in para. 21 of the petition about Taheria Madressa Polling Station incidents are true.
10. Whether Autorickshaws were hired to bring voters to Polling Stations to vote with the knowledge and connivance of the opponent No. 1 or his agent as alleged in para. 22.
11. Whether canvassing was carried on within 100 yards from the Polling Stations mentioned in para. 2 of further particulars of the petitioner, with the connivance of the opponent No. 1 or his agent.
12. Whether the petitioner proves that any corrupt or illegal practice or practices was or were committed by the opponent No. 1 or his agent or by any other persons, with his connivance.
13. Whether Nathalal Devraj is proved to have been duly appointed as agent of opponent No. 1 and whether he was allowed to work as such though not duly appointed.
14. Whether the result of the election is materially affected by any breach, as alleged by the petitioner, of the provisions of the Representation of People Act or its Rules.
15. To what reliefs is the petitioner entitled.
16. What orders as to costs.

6. Issues Nos. 1 and 2 were tried as preliminary issues of law and were disposed of by our order dated 6th August 1953. As stated above the petitioner's learned Advocate dropped the rest of the issues at the time of argument except issues Nos. 3 and 10 and it is unnecessary to consider the rest of the issues. Incidentally this leaves for consideration only first four grounds of the petition and the rest of the grounds do not survive. All allegations of illegal and corrupt practices against either the respondent No. 1 or his agents except those discussed in the issues Nos. 3 and 10 and all allegations against the Presiding Officers are under the circumstances held not proved.

7. *Issue No. 3.*—This issue embraces the first two grounds of the petition. We shall shortly deal with the second ground first. That ground is that the election had not been a free election by reason that coercion or intimidation had been exercised or resorted to by the Congress to vote for the respondent No. 1. This ground appears to be based on the provisions of Section 100 (1) (b) of the Representation of People Act. This sub-section contemplates conflict between a community, group or section and another community, group or section. It does not contemplate a conflict between a community or group on the other hand and an individual or individuals on the other. The petitioner must therefore allege, if this ground is to be made out, that the coercion or intimidation was exercised by one group against another. The present petition alleges that the coercion or intimidation was exercised by the Congress and does not mention the group or section upon which such intimidation was exercised. As the petitioner does not allege that coercion was exercised on any community, group or section of the community, this ground must fail as it does not satisfy the provisions of section 100(1) (b) of the Representation of People Act. The petitioner's learned Advocate attempted to rectify this defect in the petition by asking for permission to amend the petition but leave to amend it was refused by us.

8. We shall now turn to the first ground of the petition, which, is that undue influences prevailed extensively at the election. This ground is based on section 100(1) (a) of the Representation of the People Act, which reads as under:—

“(1) If the Tribunal is of opinion

- (a) that election has not been a free election by reason that the corrupt practice of bribery or of undue influence has extensively prevailed at the election;

* * * * *

the Tribunal shall declare the election to be wholly void”.

This sub-section speaks of the corrupt practice of undue influence, which is considered as a major corrupt practice in section 123, and has been defined to mean any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his

agent, with the free exercise of any electoral right. We have therefore to determine whether:—

- (1) there was a direct or indirect interference or attempt to interfere with the free exercise of an electoral right, and
- (2) whether such interference was on the part of the respondent No. 1 or the agent or of any other person with the connivance of the respondent or his agent.

Our decision on both the points is in the negative.

8. The petitioner relies upon the following instances of undue influence given by him:—

1. That the Home Minister Shri Rasiklal Parikh, while touring the Constituency in the interest of the respondent No. 1, held a public meeting at Khambhalia where he was accompanied by the Police Inspector Sjt. Karnik of Jamnagar and other Police Officers and thereby influenced the people unduly to vote for the respondent No. 1 by terrorising them.
2. The petitioner's polling agent Shri Gagubha Jesangji at the Nani Bhagedi polling station was arrested by the Police on 14th August 1952 without a warrant and was taken to Lalpar, a village 30 miles distant and released on his own recognizance on the same day.
3. At a public meeting held in Jamnagar on 11th July 1952 the Home Minister Sjt. Rasiklal Parikh promised to remove the grievances of businessmen in regard to their transport difficulties.
4. Sjt. Fulchand Tramboli the Municipal President of the Jamnagar Municipality ordered the Chief Officer of the Municipality to redress the grievances of Harijans at a meeting of the Harijans which he held in Jamnagar on 6th August 1952.
5. The respondent No. 1's canvassers Shri Jadavji Nathalal Kamdar, Shri Lavji Govind and Ramji Daya rushed into the polling station at Mota Vadala on 17th August 1952 and forced the Presiding Officer to issue ballot papers to Kana Amba and Bhana Lawa though he had formerly refused to issue ballot papers to them on the ground that their names did not tally with the names in the electoral roll.
6. The Presiding Officer at the Haripur Polling Station snatched away the ballot paper No. 086701 from a voter and unauthorisedly cancelled it.
7. The Presiding Officer at Taheria Madressa Polling Station Miss Machhar was personally influencing voters to vote for respondent No. 1 and did not allow the petitioner's polling agent to enter the polling station in time.
8. One Ranjitsinhji of Hadatoda was arrested by the Police and after his arrest the respondent No. 1's agents created the atmosphere of panic in the Constituency amongst the voters. It is alleged that they openly made a propaganda that any one who did not vote for the Congress would meet with the same fate as Ranjitsinhji. It is also alleged that as a result of this campaign Anopsang Gagubha, Dhirubha Sardarsang and others who had attended the polling stations for the purpose of voting for the petitioner went away out of fear without giving their votes.
9. The allegations about Jadavji Nathalal and others having compelled the Presiding Officer to issue ballot papers to Kana Amba and Bhana Lawa are the subject matter of issue No. 4 which has been dropped by the petitioner's learned Advocate and does not survive for consideration. The allegation about the issue of the ballot paper No. 086701 is covered by issue No. 6. The allegation that the Presiding Officer at the Taheria Madressa Polling Station was influencing the voters in favour of the respondent No. 1 is covered by issue No. 9. These issues were dropped at the time of the arguments and do not survive for consideration. We have therefore to see whether it is proved that Shri Rasiklal Parikh toured the constituency accompanied by Police Officers as alleged in the petition, whether he gave promises to the merchants in the meeting held at Jamnagar and whether the Municipal President ordered the redress of Harijans' grievances and whether these allegations if proved amount to the exercise of corrupt practice or undue influence. The petitioner's learned Advocate made no mention of any meetings in his argument nor did he refer to any evidence about what took place at these meetings. He was unable to point out how what Shri Rasiklal Parikh said at the meeting at Khambhalia or Jamnagar or what the Municipal President did in the meeting in Jamnagar amounted to interference with the exercise of

any one's electoral right. His only argument was that Sjt. Rasiklal Parikh toured the constituency in his official capacity as the Home Minister of Saurashtra and not as a leader of the Saurashtra Congress party and this amounted to the exercise of undue influence. Sjt. Karnik the Home Inspector of Police of Jamnagar (Ex. 40) was examined by the petitioner on this point and the Home Minister's tour programmes for Jamnagar and other places issued by the Home Department were also produced at Ex. 31 to 38. The petitioner examined some witnesses, who had attended the public meetings at Khambhalla to show that the Home Minister was accompanied by the respondent No. 1 and other local Congress leaders, that they were escorted by a Policy Party headed by the Inspector Karnik and that public meetings were addressed by them. The respondent No. 1 admits having toured the constituency in the company of Shri Rasiklal Parikh and having addressed public meetings. Shri Karnik admits having led the escorting party during the tour. But both the respondent No. 1 and Karnik say that Shri Rasiklal was touring as a Congress leader. It was however submitted by the petitioner's Advocate that the fact that Sjt. Rasiklal went about with a police escort and the tour programmes were issued from the Home Department showed that he was touring in his official capacity and this amounted to the exercise of undue influence. We do not agree with this submission. The Home Minister's tour programme at Ex. 38 shows that he had visited Jamnagar on 1st August 1952 and 2nd August 1952 in connection with the election. According to Shri Karnik he visited a number of villages including Khambhalla and addressed public meetings there. Ex. 31 is another tour programme and shows that on 15th August 1952 he visited Jamnagar to attend the Flag hoisting ceremony. This visit was unquestionably in his official capacity and it is no one's case that he undertook any election work in Jamnagar on that day. The tour programmes make a clear distinction between the Home Minister's official tour and his tour as a Congress leader for election purposes. It is alleged by the petitioner and his witnesses that Shri Rasiklal's car flew the national flag. Shri Karnik was not questioned whether Shri Rasiklal's car was flying the national flag, but the respondent No. 1 says that their car flew the Congress flag. We accept the respondent No. 1's statement for the petitioner's witnesses might well have mistaken the Congress flag for the national flag. If the petitioner wanted to prove beyond doubt that Shri Rasiklal's car flew the national flag he should have questioned Karnik on the point. It is moreover significant that a taxi cab was used by Shri Rasiklal and his party during the tour. If the tour was an official tour a Government car would have been used by him. The respondent further says that during the tour they had not put up in any Government guest-houses. This is another indication that he was touring as a non-official. It is true that he was escorted by a Police party during the tour but Sjt. Karnik explains that Police escort is provided to Ministers even when they go on private business. The presence of the Police escort therefore has no relevance to the nature of the tour and in fact it does not seem to have made any impression upon the people for not one instance was cited before us showing that any one was thereby intimidated or prevented from exercising his electorate rights freely. Shri Rasiklal Parikh is admittedly a prominent Congress leader in Saurashtra and is entitled to use his influence as a Congress leader. He cannot be deprived of this right simply because he happens to be a Minister. See Bengal Legislative Council case No. 3 I.E.C.D. Vol. II, p. 368. Shri Rasiklal addressed numerous public meetings and at these meetings he has exhorted the people to vote for the Congress but he had the same right to canvass votes for the Congress as the petitioner and other Hindu Mahasabha leaders had of touring the constituency and canvassing votes for that body which right they appear to have freely exercised. Therefore the allegation that Sjt. Rasiklal Parikh toured the constituency in his official capacity and thereby unduly influenced the people clearly fails.

10. It is next alleged by the petitioner that his polling agent Gagubha Jesangji at the Nani Bhagedi polling station was arrested by the police on the 14th August and taken to Lalpur 30 miles from his village Moti Bhagedi and was released on bail at Lalpur and consequently he could not return in time and remain present at the polling station at Nani Bhagedi. This, it is suggested, was done with the intention of preventing Gagubha from attending the polling station. Gagubha himself was not examined by the petitioner but he examined Anuprai Keshavlal (Ex. 69) the Sub-Inspector of Police at Lalpur. According to him a complaint under s. 216A I.P.C. against Gagubha was received by him on 5th August 1952 and Gagubha surrendered himself at the Police Station on 14th August 1952 at 16.50 hours and was released on bail at 17 hours. His evidence shows that Gagubha surrendered voluntarily and was in detention for not more than 10 minutes. His evidence must be accepted in the absence of Gagubha and the allegation that Gagubha was arrested at Moti Bhagedi and taken to Lalpur by the Police must be rejected. Moreover before this arrest can be treated as the

corrupt practice of undue influence it must be shown that the arrest was procured by the respondent No. 1 or his agent or by the Police with their connivance. This is not even alleged in the petition. It cannot therefore be held that Gagubha's arrest amounted to the corrupt practice of undue influence which would invalidate the respondent No. 1's election.

11. The next instance of the alleged undue influence is the arrest of Shri Ranjitsinhji a girasdar of Hadatoda. This Ranjitsinhji was arrested by the Police on 5th August 1952 in connection with a charge under s. 216A I.P.C. and released on bail on the same day. It is the petitioner's case that Ranjitsinhji's arrest was exploited by the respondent No. 1's agents by threatening the people that if they voted for the petitioner they would meet with the same fate as the above-mentioned Ranjitsinhji and this resulted directly in deterring many girasdars voters from voting. The petitioner states in his deposition Ex. 41 that he received information from Bahadursinh his polling agent at Mota Vagudad that Dahyalal Vasanji of Dhrol and others went to the polling station at Mota Vagudad and uttered the above threats. Bahadursinh, Ex. 129, however tells a different story. He states that he happened to pass the Nagar Naka in Dhrol at about 4 p.m. when Dahyalal and Bhanji were addressing some people collected there and uttered the above threats. Thus there is a direct contradiction between the petitioner and Bahadursinh for according to the petitioner Dahyalal Vasanji and others had gone to the polling station at Mota Vagudad whereas according to Bahadursinh the threat was uttered in Dhrol. Besides Bahadursinh does not say that Dahyalal Vasanji ever came to the polling station at Mota Vagudad. Dahyalal Ex. 141 has however denied that he uttered any such words to any one and we accept Dahyalal's word. Bahadursinh gives another instance of this intimidation which is mentioned neither in the petition nor in the lists of particulars. According to him the respondent No. 1's polling agent Dahyalal Kunverji at Mota Vagudad, who by the way, is quite a different person from Dahyalal Vasanji of Dhrol went out of the polling station while the polling was in progress and gave threats to some of the voters standing there. Anopsing Gagubha and Dhirubha Sardarsing both of Nana Vagudad, and Velubha Balubha of Mota Vagudad were amongst those present. He says that these persons did not cast their votes on account of the above threat. In the first place as this instance is not mentioned in the petition or in the lists of particulars, it cannot be considered at all. But apart from that the fact that it has not been previously mentioned strongly suggests that this incident has been introduced in evidence as an afterthought. Moreover Anopsing and Velubha have not been examined by the petitioner and this is sufficient to raise an adverse inference against the petitioner. Dhirubha Sardarsing has however been examined at Ex. 127. He says that when the threat was uttered he was alone and no other girasdar voter was present. In this statement he directly contradicts Bahadursinh for according to him Anopsing and Velubha also were present there. There are moreover other features in the evidence of Dhirubha which make his story highly incredible. Dhirubha says that the person, who uttered the threats, were the Congress badge. If this is true the threat could not have been uttered by the respondent No. 1's polling agent Dahyalal, as alleged by Bahadursinh, for polling agents are not allowed to wear badges during the poll, a fact which Bahadursinh himself admitted in his evidence. Dhirubha even pretends that Bahadursinh also wore his party badge, a fact which was very properly denied by Bahadursinh himself. Dhirubha appears to be drawing upon his imagination for the above statements can be accounted only by the fact that he had not gone to the polling station and had no idea of how polling was done. We are satisfied that Bahadursinh and Dhirubha are telling lies and a close examination of the material evidence on record establishes the falsity of this allegation.

12. It will be of interest to note that although much capital is made out of the arrest of Ranjitsinh on behalf of the petitioner by attempting to show that his arrest had struck terror all round and could be easily exploited by the Congress party Ranjitsinh himself never felt any trepidation nor did his arrest deter him in any way from his electioneering activities. It appears that he was arrested on two occasions by the Police. He was first arrested on 26th May 1952 in connection with a dacoity at Devalia but admittedly on this date no election propaganda was going on. He was kept in jail for some time and though the date of his release is not clearly brought out it is certain that he was released during the election campaign. He was again arrested on 5th August 1952 on a charge under s. 216A I.P.C. but was released on the same day. When he was arrested for the second time the Police Officer Dipsinh is alleged by Ranjitsinh to have informed him that he was arrested because he was acting against the Congress. Ranjitsinh worked for the Hindu Mahasabha during the bye-election and admits that after his release he continued to work for the Hindu Mahasabha, met Girasdar leaders and asked them to vote for the Hindu Mahasabha. He had actually visited four villages for

propaganda purposes. These facts are sufficient to show that his statement that Dipsinhji informed him that he arrested him for acting against the Congress is false. Dipsinhji (Ex. 148) was the Deputy Superintendent for Jamnagar Sub-Division at that time and denies having made the statement attributed to him by Ranjitsinh. He was not cross-examined by the petitioner and consequently his evidence must be accepted. On his own admission his arrest did not deter Ranjitsinh from meeting Girasdar leaders and touring villages. People saw him carrying on his party work undeterred by his arrest. He had suffered no check in his activities and it is unthinkable that 12 days after his arrest and release the respondent's agents should select Rangitsinh as the medium for terrorising the people.

13. This disposes of the specific instance of undue interference mentioned by the petitioner. The petitioner's learned Advocate however mentioned the arrest of a large number of girasdars on a charge of harbouring the dacoit Bhupat and his gang. He pointed out that the cases against the girasdars had either been withdrawn or not prosecuted and this showed that the arrests were made with a view to terrorise the girasdar voters. We are unable to agree with this argument. Bhupat and his gang were busy spreading murder and dacoity in Saurashtra and it was the primary duty of the State to stop this. The process of law cannot be held up because an election campaign is going on and we refuse to believe that the Police and the Government entered into a conspiracy against the petitioner and arrested these girasdars merely with a view to prevent them from exercising their electoral rights. Not one instance of any one having been deterred from exercising the right was pointed out to us. On the contrary Ranjitsinh himself furnishes an instance of the complete freedom of atmosphere which prevailed during the bye-election. The first ground of the petition therefore fails.

14. *Issue No. 1.*—The only other issue which remains to be considered is whether auto rickshaws were hired or procured in Jamnagar by the respondent No. 1's agents or with his connivance for carrying voters to polling stations. This is a major corrupt practice and amounts to a cognizable offence under the Act. The petitioner examined a number of witnesses to prove his allegation. Two of them Sumar Jiwa and Shamji Manji (Ex. 58 and 59) are drivers of auto rickshaws and the rest of the witnesses are alleged to have been taken to the polling stations in auto rickshaws. There is also the witness Kantiprasad M. Dave, Ex. 62, who was specially brought to Jamnagar on behalf of the petitioner, to see that no malpractice was indulged in by the Congress party during the election. He deposes to auto rickshaws bringing voters to the Taheria Madressa polling station and produces two snapshots which he took of one of such auto rickshaws (Ex. 63 and 64). Ex. 63 shows an auto rickshaw on the main road which according to Kantilal was snapped while the auto rickshaw was within 100 yards of the polling station and Ex. 64 shows the same auto rickshaw returning with voters. Kantilal snapped the auto rickshaw from the rear. Ex. 63 shows a man with a cycle standing near the auto rickshaw and according to Kantiprasad this man was exhorting voters to vote for respondent No. 1 Kantiprasad further alleges he took the snapshots at about 10-15 A.M. and after about 15 minutes the respondent No. 1, Sjt. Jaisukhlal Hathi, the Union Deputy Minister and Allahrakha Hassan a local Congress leader came in a car and gave instructions that the auto rickshaws should not be taken within the prohibited distance but asked the drivers to bring voters as quickly as possible. He says that he tried to see the petitioner but could not meet him till the evening. When he met the petitioner he told him what he had seen. He further says that he had noted the register numbers of the auto rickshaws seen by him and had handed them over to the petitioner. The petitioner also states that he had seen voters being taken in auto rickshaws though he kept no notes of their register numbers or of the names of the voters. In the evening Kantiprasad had delivered him the register numbers noted by him. The driver Sumar Jiwa is the driver of the auto rickshaw No. 336 owned by Kherani Cycle Store. According to Sumar his auto rickshaws and three other rickshaws owned by the Kherani Cycle Store were hired by the Imperial Trading Co., which is owned by the aforesaid Allahrakha Hasan. His rickshaw was detailed to carry voters from the Voravad locality to the Taheria Madressa polling station and he made about 25 trips during the day. According to him auto rickshaws owned by the Imperial Trading Co. were also used. He says that Congress placards were fixed in the rear of some of the auto rickshaws. The respondent No. 1 examined Ibrahim Mahomed of the Kherani Cycle Stores Ex. 150. Ibrahim denied all acquaintance with Sumar Jiwa and says that the Kherani Cycle Stores owned only one auto rickshaw of which the driver was Hasan and not Sumar. He denies that Allahrakha Hasan or the Imperial Trading Co. hired his auto rickshaw during the bye-election. This witness has not been cross-examined on behalf of the petitioner and gives a complete lie to Sumar Jiwa who has no connection with the Kherani Cycle Stores and appears to be a got up witness. The petitioner

did not dare to cross-examine Ibrahim and this is sufficient to condemn Sumar as a liar. Shamji Manji Ex. 59 the other driver says that Rauf a partner of the Imperial Trading Co., had hired his auto rickshaw No. 2571—on the evening of the previous day of polling and he was asked to report to the Imperial Trading Co., at 7-30 next morning. He was however late and therefore he was discharged and paid Re. 1. It is clear from his evidence that he did not actually carry any voters and his evidence is of no value to the petitioner except as providing corroboration to the general allegation regarding hiring of auto rickshaws. Allarakha Hasan Ex. 142 the owner of the Imperial Trading Co. however denies having hired any auto rickshaw and says that his Co. does not own any auto rickshaw. He was cross-examined on behalf of the petitioner to show that he was a shareholder in the National Bus Transport Co. Ltd., which held a licence to ply passenger buses between Jamnagar and Kalawad suggesting thereby that he had an interest in supporting the party in power but strangely enough not one question was put to him about hiring any auto rickshaw or about hiring either Sumar or Shamji or about making any payment to them. Rauf Ex. 151 the manager of the Imperial Trading Co. also denies that his Co. had hired any auto rickshaw or that Shamji was called to bring his rickshaw as alleged by him. He was not cross-examined by the petitioner. The rest of the petitioner's witnesses are alleged to have been given a ride to the polling station and we are asked to believe that the Congress volunteers gave these rides without inquiring about their political leanings or without ascertaining whether they would vote for the Congress or not. The respondent No. 1 Ex. 171 denies that he or his agents hired or procured auto rickshaws and he further denied the specific allegation of Kantiprasad that they had asked any auto rickshawwalla to bring voters to the polling station. In fact according to him he did not go to the Taharia Madressa polling station in the morning because his finger was accidentally injured and he had to go home directly after getting his injury dressed in the hospital. The oral evidence led by the petitioner on the point is in our opinion thoroughly unreliable. Sumar Jiwa and Shamji Manji provide concrete evidence which could be tested and they have been sadly bowled over by the evidence of Allarakha Hasan, Rauf and respondent No. 1. But apart from the oral evidence the circumstances of the case make the story inherently improbable. Kantiprasad M. Dave who was specially brought to Jamnagar to note illegal practices is said to have noted the register numbers of the auto rickshaws. He is also alleged to have made a note of the name of one of the voters who was brought in an auto rickshaw and to have handed over these notes to the petitioner in the evening. But strangely enough these notes are not produced. It may be stated that there were 14 polling stations in Jamnagar and at every polling station the Hindu Mahasabha had pitched a tent for its workers. The auto rickshaws were pouring voters in front of these tents but the petitioner could not think of examining any of the persons workings in these tents. It is also very striking that no complaint about this malpractice was made to the Returning Officer or any other responsible officer although the petitioner and his polling agent must have known that it was cognizable offence. It is true that the petitioner's witness Kanji Valji (Ex. 100) says that he complained to Jamadar Ranubha (Ranjitsinh Ex. 149) at the New High School polling station that volunteers wearing Congress badges and auto rickshaws having Congress placards were allowed to pass without hindrance. Ranjitsinh (Ex. 149) however denies that any such complaint was made to him. He had not been cross-examined on behalf of the petitioner. No complaint could have been made by Kanji for if Ranjitsinhji did not pay heed to it, he would surely have approached superior officers. But the important point to be noted is that the petitioner, who was vitally interested in the election and Kantiprasad who was brought specially to watch the election, chose to keep silence, although they were eye witnesses to this malpractice. They could have gone to the Returning Officer or straight away filed a complaint with the Police against the offending rickshaw drivers and the volunteers. This would have been their conduct if their allegation was well-founded. The snapshots Ex. 63 and 64 do not help us in identifying either the auto rickshaw or their occupants or its driver. The registration number of the auto rickshaw is conveniently covered by the Congress placard and both the photographs have been taken from the rear so that it is not possible to see the faces of its occupants. Kantiprasad's story is thus effectively rendered impossible of verification and no reliance can under the circumstances be placed upon mere snap-shots. It is easy to take snapshots at any time and before they can be considered the petitioner must give convincing materials which would enable us to identify the auto rickshaw or its occupants.

15. We hold therefore that the allegation that auto rickshaws were hired or procured to carry voters to the polling stations is proved to be false and this issue is therefore decided in the negative. The petitioner has attempted to cast an unwarrantable slur upon the respondent No. 1 and his agents and others with the deliberate intention of lowering the standing of the respondent No. 1 and of

the Congress party. The whole petition is full of reckless allegations of corrupt and illegal practices not only against the respondent No. 1 and his agents but also against the Presiding Officers and Police Officials most of which allegations were dropped even before they were argued and not one of them has been substantiated.

16. The petition must fail and is ordered to be dismissed with costs. Advocates' costs are taxed at Rs. 500. Separate sets of costs are ordered to be paid to the Advocate General and the respondent No. 1.

(Sd.) J. A. BAXI, *Chairman,*
Election Tribunal.

(Sd.) M. R. UNWALLA, *Member,*
Election Tribunal.

(Sd.) R. M. JOSHI, *Member,*
Election Tribunal.

RAJKOT;

The 27th February 1954.

ANNEXURE

ELECTION PETITION CASE NO. 336 OF 1952

Sharma Shri Krishna Sharma Gurudayal Sharma, age 52, residing at Savitri Sadan, Manhar Plot, Rajkot—*Petitioner.*

Vs.

(1) Desai Khandubhai Kasanjli, Dev Sheri, Mandvi Pole, Ahmedabad.

(2) The Returning Officer, Halar Constituency for the House of the People, Manvillas Palace, Jamnagar—*Respondents.*

Mr. V. G. Hathi, Advocate for the petitioner Messrs. P. B. Patwari and K. L. Hathi for the respondent No. 1.

Mr. A. R. Bakshi, Advocate General for the respondent No. 2.

ORDER ON PRELIMINARY ISSUES

The petitioner filed this petition challenging the election of the respondent No. 1 at the bye-election from the Halar Constituency, Saurashtra for the House of the People. The respondent No. 1 filed a written statement in which amongst other objections he raised two objections, viz. that the petition was not maintainable on the ground that the petitioner had failed to join Purushottam Dudhat, who was a duly nominated candidate at the election, and that the petition was barred by time. Issues were framed and the following two issues of law were heard as preliminary issues:—

1. Whether the petition is not legally tenable on account of non-joinder of Purushottam Dudhat.
2. Whether the petition is barred by time.

2. Mr. Patwari, the learned Advocate for the resident No. 1, did not press the issue of limitation and it does not survive for consideration. The other issue is whether Purushottam Dudhat is a necessary party to the petition. Mr. Patwari contended that he (Mr. Dudhat) was a duly nominated candidate at the election and was a necessary party under s. 82 of the Representation of the People Act 1951 and his non-joinder was fatal to the petition. Section 82 reads as under:—

"A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated."

3. The questions which we have to decide are whether Purushottam Dudhat was a duly nominated candidate at the election, and if so what is the effect of his non-joinder on the maintainability of the petition.

4. The question whether Purushottam Dudhat was a duly nominated candidate or not is one of fact and the burden of proving it rests on the respondent No. 1. It is common ground that Dudhat had filed his nomination paper with the Returning Officer under s. 33 and his nomination was subsequently rejected after scrutiny by that Officer under s. 36. Mr. Patwari referred further to the notification dated 21st October 1952 published at page 2313 of Part I S. 1 of the Government of India Gazette Extraordinary notifying that Purushottam Dudhat had filed the return of his election expenses under rule 113. These are the materials,

on which we have to decide whether Dudhat is shown to be a duly nominated candidate at the election.

5. Mr. Patwari contended that as soon as Purushottam Dudhat's nomination paper was delivered to the Returning Officer, it must be assumed that he had complied with the provisions of ss. 33 and 34, otherwise the Returning Officer would have refused to accept the nomination papers. We do not find any authority in the Representation of the People Act for this assumption. The delivery of the nomination paper to the Returning Officer is subject to a scrutiny under s. 36. It may be rejected after scrutiny under (c) of sub-section (2) to s. 36 on the ground that the proposer or the seconder was disqualified from subscribing the nomination paper or under (d) of sub-section (2) to s. 36 on the ground that there had been any failure to comply with any of the provisions of s. 33 or s. 34. It is therefore necessary to know the grounds on which Dudhat's nomination was rejected, and unless these grounds are placed before us we cannot presume that Purushottam Dudhat had complied with the provisions of s. 33 or 34 of the Act. Therefore, even if we accept Mr. Patwari's contention, that a candidate who has properly filed his nomination paper under s. 33 and complied with the provisions of s. 34, but whose nomination was rejected by the Returning Officer on other grounds, is a duly nominated candidate at the election, Purushottam Dudhat is not shown to have complied with the provisions of these sections and he cannot therefore be regarded as a duly nominated candidate, and s. 82 cannot be said to apply to his case. Consequently the question about the effect of non-joinder of Purushottam Dudhat to the petition does not arise.

6. In the result the respondent No. 1 fails on both the issues and the petition is ordered to be set down for further hearing. The respondent No. 1 shall pay Rs. 50 as the costs of the petitioner and the Advocate General in separate sets.

(Sd.) J. A. BAXI, *Chairman,*
Election Tribunal.

(Sd.) M. R. UNWALLA, *Member,*
Election Tribunal.

(Sd.) R. M. JOSHI, *Member,*
Election Tribunal.

RAJKOT;
The 6th August 1953.

[No. 19/336/52-Elec.III/5189.]

By order,

P. R. KRISHNAMURTHY, Asstt. Secy.